

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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8/28/2014 3:06 pm

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DELTA AIR LINES, INC.,

Plaintiff,

-against-

MAR AIR FOODS, LLC,

Defendant.
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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

ORDER

13-CV-4669 (ADS) (GRB)

APPEARANCES:

Smith, Gambrell & Russell, LLP

Attorneys for the Plaintiff

250 Park Avenue, Suite 1403

New York, NY 10177

By: Victor M. Metsch, Esq., Of Counsel

NO APPEARANCE:

Mar Air Foods, LLC

SPATT, District Judge.

On August 20, 2013, the Plaintiff Delta Air Lines, Inc. (the "Plaintiff") commenced this action against the Defendant Mar Air Foods, LLC (the "Defendant"). The Plaintiff asserts two causes of action against the Defendant, as follows: (1) a breach of contract claim and (2) an attorneys' fees claim. According to the Plaintiff, the Defendant breached a Concession Agreement the parties entered into, under which the Defendant agreed to sublease certain spaces located within the premises and facilities, which the Plaintiff had leased from the Port Authority of New York and New Jersey. These premises, designated as Terminal 2 and Terminal 3, were located at John F. Kennedy International Airport, Jamaica, New York.

On August 28, 2013, the Defendant was served with the Plaintiff's Complaint. The Defendant did not answer. On November 19, 2013 the Plaintiff requested a certificate of default as against the Defendant and, on that same date, the Clerk of the Court noted the default of the Defendant. Thereafter, on November 26, 2013, the Plaintiff moved for a default judgment against the Defendant.

On January 10, 2014, this Court referred the matter to United States Magistrate Judge Gary R. Brown for a recommendation as to whether the motion for a default judgment should be granted, and if so, (1) whether damages should be awarded, including reasonable attorneys' fees and costs, and (2) whether any other relief should be granted.

On August 11, 2014, Judge Brown issued a Report and Recommendation (the "Report") recommending that (1) the Plaintiff's motion for a default judgment be granted; and (2) the Plaintiff be awarded \$1,205,127.77 in damages, plus additional prejudgment interest—on the minimum annual payments, variable payments, late charges, utility costs and default interest, totaling \$1,134,618.51—which continuously accrues at nine percent per annum until the date of judgment. On August 12, 2014, the Plaintiff served the Report on the Defendant. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Brown's Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Brown's Report, it is hereby

ORDERED, that Judge Brown's Report and Recommendation is adopted in its entirety. The Court (1) grants the Plaintiffs' motion for a default judgment; and (2) awards the Plaintiff \$1,205,127.77 in damages, plus additional prejudgment interest—on the minimum annual payments, variable payments, late charges, utility costs and default interest, totaling \$1,134,618.51—which continuously accrues at nine percent per annum until the date of judgment; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of the Plaintiff as set forth above; and it is further

ORDERED, that the Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: Central Islip, New York
August 28, 2014

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge